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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
 9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
 11 In the Matter of the Accusation Against:

Case No. *2012-138*

12 **MARILYN JAYNE HELMS, a.k.a.**
MARILYN JAYNE FAWLEY, a.k.a.
 13 **MARILYN JAYNE HELMINIAK, a.k.a.**
MARILYN JAYNE KLOBERTANZ
 14 **2906 N. Cardell Circle**
Tucson, AZ 85712
 15 **Registered Nurse License No. 291225**

A C C U S A T I O N

16 Respondent.

17
 18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
 21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
 22 Consumer Affairs.

23 2. On or about July 31, 1978, the Board of Registered Nursing issued Registered Nurse
 24 License Number 291225 to Marilyn Jayne Helms, also known as Marilyn Jayne Fawley, also
 25 known as Marilyn Jayne Helminiak, also known as Marilyn Jayne Klobertanz (Respondent). The
 26 Registered Nurse License expired on June 30, 2008, and has not been renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

8. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

COST RECOVERY

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct - Out of State Discipline,
(Bus. & Prof. Code § 2761, subd. (a)(4))

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1 Board for approval the name of a treatment professional of Respondent's choice to conduct
2 psychological counseling for substance abuse; (6) within 7 days of receipt of approval from the
3 Arizona Board, make an appointment to begin participation in treatment; (7) within 30 days of the
4 effective date of the Order, submit to the Board for approval the name of a treatment professional
5 of Respondent's choice to conduct medication management for depression and anxiety
6 throughout the probationary period; (8) cause each of her treatment professionals to provide
7 quarterly reports to the Arizona Board; (9) continue undergoing all treatment and counseling until
8 the Arizona Board is notified in writing by each treatment professional that treatment is no longer
9 necessary; (10) within 7 days of the effective date of the Order, and throughout the term of Order,
10 participate at least weekly in SMART meetings and submit quarterly reports with her sponsor's
11 initials to the Arizona Board; (11) within 30 days of the effective date of the Order, obtain a
12 temporary sponsor if participating in a 12-step program, then obtain a permanent sponsor within
13 60 to 90 days, and maintain a sponsor relationship throughout the term of the Order; (12) within 7
14 days of the effective date of the Order, enroll in a program that meets Board criteria for random
15 drug testing, to be performed at least once per month; (13) abstain completely from the personal
16 use of alcoholic beverages; (14) abstain completely from the personal use or possession of
17 controlled substances; (15) 12 months prior to the termination of the Order or as requested by the
18 Board or its designee, be evaluated by a certified relapse prevention therapist, and if
19 recommended by the therapist, enter, participate regularly in, and successfully complete a relapse
20 prevention program, or any other recommendations as designated by the relapse prevention
21 evaluator; (16) while participating in the relapse prevention program, cause the program
22 facilitator to submit to the Board evidence of Respondent's satisfactory attendance, participation,
23 discharge, and successful completion of the program; (17) participate in the relapse prevention
24 program or therapy until the Arizona Board receives written verification from the facilitator that
25 Respondent has successfully completed the program; (18) provide a copy of the Order to any
26 employer for whom Respondent works as a registered nurse and to the Program Director of any
27 nursing program Respondent may attend; (19) for any job requiring a registered nurse license,
28 cause her employer to submit quarterly employer evaluations to the Arizona Board; (20) if not

1 working in a position that requires a registered nurse license or attending school, provide a self-
2 report to the Arizona Board describing other employment or activities; (21) practice as a
3 registered nurse only under the on-site supervision of a professional nurse in good standing with
4 the Arizona Board; (22) work only the day or evening shift and not work more than 3 consecutive
5 12-hour shifts, 2 consecutive 8 hour shifts within a 24 hour period, or 16 hours within a 24 hour
6 period; (23) not work for a nurse's registry, home health, traveling nurse agency, any other
7 temporary employing agencies, float pool, or in a position that requires on-call status; (24) appear
8 in person, or if residing out of state, appear telephonically, for interviews with the Board or its
9 designee upon request and with reasonable notice; (25) notify the Arizona Board, in writing,
10 within 1 week of any change in nursing employment, personal address, or telephone number; and
11 (26) obey all federal, state, and local laws, and all laws and rules governing the practice of
12 nursing.

13 11. The underlying conduct supporting the Arizona Board's disciplinary action is that on
14 or about January 15, 2006, Respondent was arrested by the Tucson Police Department for driving
15 under the influence (DUI). Respondent's Intoxilyzer results were 0.215 and 0.210. An
16 Intoxilyzer is a breath analysis device which produces an estimate of blood alcohol based upon
17 infrared spectroscopy. On or about March 13, 2006, in the Tucson Municipal Court, docket
18 number TR6004720, Respondent was convicted of extreme DUI. Respondent was ordered to pay
19 a fine and sentenced to 12 months of supervised probation followed by 12 months of
20 unsupervised probation, completion of an alcohol evaluation, traffic survival school, and 30 days
21 in jail with 20 days suspended. On or about September 19, 2006, in an interview with Arizona
22 Board staff, Respondent expressed remorse for her conduct that led to her DUI conviction, took
23 responsibility for her actions, and provided examples of actions she had taken to demonstrate her
24 commitment to overcome her misuse of alcohol, including participation in psychotherapy,
25 counseling, and Smart Recovery Group meetings.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Out of State Discipline)
(Bus. & Prof. Code § 2761, subd. (a)(4))

12. Complainant realleges the allegations contained in paragraphs 10 and 11 above, and incorporates them by reference as if fully set forth.

13. Respondent has subjected her registered nurse license to disciplinary action under Code section 2761, subdivision (a)(4), in that on or about June 14, 2007, in a disciplinary action before the Oregon State Board of Nursing (Oregon Board), Case Number 07-326, the Oregon Board entered a Final Order Stipulation for Voluntary Surrender (Final Order), ordering that the Stipulation signed by Respondent on May 30, 2007, be approved. The Final Order also accepted the voluntary surrender of Respondent's Oregon registered nurse license.

14. The underlying conduct supporting the Oregon Board's disciplinary action is that in or about March 2007, Respondent came to the attention of the Oregon Board when she was reported for issues relating to substance abuse involving alcohol. It was also reported that Respondent was being treated for depression and anxiety. In a letter dated May 15, 2007, Respondent acknowledged the seriousness of her alcohol abuse and stated that it was in her best interest to resolve her disciplinary issues with the Oregon Board by voluntarily surrendering her Oregon registered nurse license. On or about June 4, 2007, the Oregon Board entered a Stipulation for Voluntary Surrender of Registered Nurse License (Stipulation) with Respondent, and Respondent agreed that she would not practice as a registered nurse in Oregon from the date of her signature on the Stipulation. Respondent signed the stipulation on May 30, 2007.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 291225, issued to Marilyn Jayne Helms, also known as Marilyn Jayne Helminiak, also known as Marilyn Jayne Klobertanz;

1 2. Ordering Marilyn Jayne Helms, also known as Marilyn Jayne Helminiak, also known
2 as Marilyn Jayne Klobertanz to pay the Board of Registered Nursing the reasonable costs of the
3 investigation and enforcement of this case, pursuant to Business and Professions Code section
4 125.3; and

5 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: August 30, 2011

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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